

EXHIBIT C

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2009 SEP 28 PM 2:37

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Attorneys for Plaintiff
WORLD BOTANICAL
GARDENS, INCORPORATED

IN THE CIRCUIT COURT OF THE THIRD CIRCUIT

STATE OF HAWAII

WORLD BOTANICAL GARDENS,
INCORPORATED, a Nevada corporation,

Plaintiff,

vs.

WALTER WAGNER; LINDA WAGNER;
DAN PERKINS; DAVID ADAMS; JOHN
DOES 1-10; JANE DOES 1-10, and DOE
ENTITIES 1-10,

Defendants.

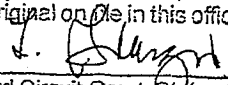
Civil No. 05-1-0210

FIRST AMENDED FINAL JUDGMENT

Trial Date: April 28, 2008

Judge: Greg K. Nakamura

I hereby certify that this is a full, true and correct
copy of the original on file in this office.


Clerk, Third Circuit Court, State of Hawaii

FIRST AMENDED FINAL JUDGMENT

The Court having entered an *Findings of Fact, Conclusions of Law, and Decision and Order* on October 9, 2008 and an *Order Granting Plaintiff World Botanical Gardens, Incorporated's Motion for Award of Attorney's Fees and Taxable Costs Filed Herein on November 19, 2008* on January 30, 2009, and of all Plaintiff World Botanical Gardens, Incorporated's claims against Defendant David Adams having been dismissed with prejudice on June 20, 2008, and good cause appearing therefor,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED, that Final Judgment be and the same is hereby entered in favor of Plaintiff World Botanical Gardens, Incorporated and against Defendants Walter Wagner also known as Walter L. Wagner, Linda Wagner also known as Linda M. Wagner, and Dan Perkins on the following causes of action which were alleged in the Complaint filed herein on June 30, 2005, or which arise out of said Complaint, including Counts I, II, III, IV, V, VI, VI (sic) and IX of the Complaint, as follows:

1. Jointly and severally against *Defendants Walter Wagner also known as Walter L. Wagner, Linda Wagner also known as Linda M. Wagner, and Dan Perkins:* \$1,439,986.16
2. Jointly and severally against *Defendants Walter Wagner also known as Walter L. Wagner and Linda Wagner also known as Linda M. Wagner:* \$ 287,977.34
3. Jointly and severally against *Defendants Walter Wagner also known as Walter L. Wagner and Dan Perkins:* \$ 14,814.26
4. Individually against *Defendant Walter Wagner also known as Walter L. Wagner*, which includes the sum of \$500,000.00 in punitive damages: \$ 662,745.69
5. Individually against *Defendant Linda Wagner also known as Linda M. Wagner*, which includes the sum of \$150,000.00 in punitive damages: \$ 150,250.00
6. Individually against *Defendant Dan Perkins*, which includes the sum of \$100,000.00 in punitive damages: \$ 104,252.93

plus interest thereon at the rate of ten percent (10%) per annum from the date of entry of this Judgment, pursuant to HRS Section 478-3.

All other claims, counts (including Count VIII) and causes of action brought by Plaintiff, if any, are dismissed without prejudice. There being no other claims, cross-claims or counterclaims which have been filed herein, and all claims in the above-entitled action having been resolved, the Court expressly directs the entry of this First Amended Final Judgment consistent with Rule 58 of the Hawaii Rules of Civil Procedure.

DATED: Hilo, Hawaii, SEP 28 2009.

GREG K. NAKAMURA (Seal)

JUDGE OF THE ABOVE-ENTITLED COURT

FIRST AMENDED FINAL JUDGMENT;
World Botanical Gardens, Incorporated v. Walter Wagner, et al.; Civil No. 05-1-0210

Westlaw.

265 P.3d 493

126 Hawai'i 24, 265 P.3d 493, 2011 WL 4375083 (Hawai'i App.)
(Table, Text in WESTLAW), Unpublished Disposition
(Cite as: 126 Hawai'i 24, 2011 WL 4375083 (Hawai'i App.))

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Unpublished disposition. See HI R RAP Rule 35
before citing.

Intermediate Court of Appeals of Hawai'i.
WORLD BOTANICAL GARDENS, INC., a
Nevada corporation, Plaintiff-Appellee,

v.

Walter WAGNER, Linda Wagner, Dan Perkins,
Defendants-Appellants,
and

David Adams, John Does 1-10, Jane Does 1-10,
and Doe Entities 1-10, Defendants-Appellees.

No. 30133.
Sept. 20, 2011.

Appeal from the Circuit Court of the Third Circuit
(Civil No. 05-1-0210).

Walter Wagner, Linda Wagner, and Dan Perkins,
on the briefs, Defendants-Appellants pro se.

Thomas L.H. Yeh, (Law Offices of Yeh & Moore),
on the briefs, for Plaintiff-Appellee.

FOLEY, Presiding J., FUJISE and GINOZA, JJ.

SUMMARY DISPOSITION ORDER

*1 Defendants-Appellants Walter Wagner, Linda Wagner, and Dan Perkins (collectively, **Wagners**) appeal from the First Amended Final Judgment filed on September 28, 2009 in the Circuit Court of the Third Circuit ^{FN1} (circuit court). The circuit court entered judgment in favor of Plaintiff-Appellee World Botanical Gardens, Incorporated, a Nevada corporation, (WBG) and against Wagners on Counts I, II, III, IV, V, VI, ^{FN2} and IX of WBG's June 30, 2005 complaint and dismissed without prejudice Count VIII of the complaint.

FN1. The Honorable Greg K. Nakamura

presided.

FN2. WBG's complaint contained two Count VIs: Accounting and Constructive Trust.

On appeal, Wagners contend:

(1) The circuit court erred when it denied Wagners' motion for a new trial.

(2) The circuit court did not have jurisdiction because the statute of limitations had run on WBG's claims and there was no triable issue of material fact.

(3) Partial summary judgment in favor of WBG was inappropriate because there existed a triable issue of material fact.

(4) The circuit court did not have jurisdiction to enter its First Amended Final Judgment due to a violation of Rule 23 of the Rules of the Circuit Courts.

Wagners' Opening Brief (OB) fails to conform to Hawai'i Rules of Appellate Procedure (HRAP) Rule 28. HRAP Rule 28(b)(3) provides that Wagners must provide in their OB

[a] concise statement of the case, setting forth the nature of the case, the course and disposition of proceedings in the court or agency appealed from, and the facts material to consideration of the questions and points presented, with record references supporting each statement of fact or mention of court or agency proceedings. In presenting those material facts, all supporting and contradictory evidence shall be presented in summary fashion, with appropriate record references. Record references shall include page citations and the volume number, if applicable. References to transcripts shall include the date of the transcript, the specific page or pages referred to, and the volume number, if applicable. Lengthy quota-

265 P.3d 493
126 Hawai'i 24, 265 P.3d 493, 2011 WL 4375083 (Hawai'i App.)
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tions from the record may be reproduced in the appendix. There shall be appended to the brief a copy of the judgment, decree, findings of fact and conclusions of law, order, opinion or decision relevant to any point on appeal, unless otherwise ordered by the court.

Wagners' concise statement of the case fails to set forth the nature of the case, describing the course and disposition of proceedings in the circuit court, or the facts material to the consideration of the points presented. Wagners do not provide record references to every statement of fact or reference to court proceedings or transcripts as required under Rule 28(b)(3). Moreover, Wagners did not append to their OB a copy of the judgment, order, or findings of fact and conclusions of law relevant to their points on appeal.

Additionally, Wagners' points on appeal are nearly incomprehensible and their arguments do not contain "the contentions of the appellant on the points presented and the reasons therefor, with citations to the authorities, statutes and parts of the record relied on.... Points not argued may be deemed waived." HRAP Rule 28(b)(7). Wagners' OB does not conform to HRAP Rule 28 nor does it make any comprehensible arguments upon which this court could adequately rule.

*2 Therefore,

IT IS HEREBY ORDERED that the First Amended Final Judgment filed on September 28, 2009 in the Circuit Court of the Third Circuit is affirmed.

Hawai'i App., 2011.
World Botanical Gardens, Inc. v. Wagner
126 Hawai'i 24, 265 P.3d 493, 2011 WL 4375083
(Hawai'i App.)

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Page 1

Not Reported in P.3d, 2011 WL 6067323 (Hawai'i)
(Cite as: 2011 WL 6067323 (Hawai'i))

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Only the Westlaw citation is currently available.

Unpublished opinion. See HI R RAP Rule 35 before citing.

Supreme Court of Hawai'i.
WORLD BOTANICAL GARDENS, INCORPORATED, a Nevada corporation, Respondent/
Plaintiff-Appellee,

v.

Walter WAGNER, Linda Wagner, and Dan Perkins, Petitioners/Defendants-Appellants,
and
David Adams, Respondent/Defendant-Appellee.

No. SCWC-30133.
Dec. 6, 2011.

Certiorari to the Intermediate Court of Appeals
(ICA No. 30133; Civ. No. 05-1-0210).

Walter L. Wagner, Linda M. Wagner, and Dan Perkins, Petitioners/Defendants-Appellants pro se,
on the application.

NAKAYAMA, Acting C.J., ACOBA, DUFFY, and
McKENNA, JJ. and Circuit Judge LEE in place of
RECKTENWALD, C.J., recused.

*ORDER REJECTING APPLICATION FOR WRIT
OF CERTIORARI*

*1 Petitioners/Defendants-Appellants's application for writ of certiorari filed on October 27, 2011, is hereby rejected.

Hawai'i, 2011.
World Botanical Gardens, Inc. v. Wagner
Not Reported in P.3d, 2011 WL 6067323 (Hawai'i)

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NO. SCWC-30133

IN THE SUPREME COURT OF THE STATE OF HAWAII

WORLD BOTANICAL GARDENS, INCORPORATED, a Nevada corporation,
Respondent/Plaintiff-Appellee,

vs.

WALTER WAGNER, LINDA WAGNER, and DAN PERKINS,
Petitioners/Defendants-Appellants,

and

DAVID ADAMS, Respondent/Defendant-Appellee.

CERTIORARI TO THE INTERMEDIATE COURT OF APPEALS
(ICA NO. 30133; CIV. NO. 05-1-0210)

ORDER REJECTING APPLICATION FOR WRIT OF CERTIORARI

(By: Nakayama, Acting C.J., Acoba, Duffy, and McKenna, JJ.
and Circuit Judge Lee in place of Recktenwald, C.J., recused)

Petitioners/Defendants-Appellants's application for
writ of certiorari filed on October 27, 2011, is hereby rejected.

DATED: Honolulu, Hawai'i, December 6, 2011.

Walter L. Wagner, Linda M.
Wagner, and Dan Perkins,
Petitioners/Defendants-
Appellants pro se, on the
application

/s/ Paula A. Nakayama

/s/ Simeon R. Acoba, Jr.

/s/ James E. Duffy, Jr.

/s/ Sabrina S. McKenna

/s/ Randall K. O. Lee

